FILE COPY

Office-Supreme Court, U.S.
FILED
JUN 7 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 1005

THE SUPERIOR OIL COMPANY, *Petitioner*

v.

THE UNITED GAS IMPROVEMENT COMPANY, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT THE UNITED GAS IMPROVEMENT COMPANY IN OPPOSITION

J. DAVID MANN, JR.
WILLIAM W. ROSS
JOHN E. HOLTZINGER, JR.
WILLIAM E. ZEITER
1120 Connecticut Ave., N. W.
Washington 6, D. C.

Attorneys for The United Gas Improvement Company

MORGAN, LEWIS & BOCKIUS
Philadelphia — Washington
Of Counsel

June 7, 1961

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 1005

THE SUPERIOR OIL COMPANY, *Petitioner*

v.

THE UNITED GAS IMPROVEMENT COMPANY, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR RESPONDENT THE UNITED GAS IMPROVEMENT COMPANY IN OPPOSITION

OPINIONS BELOW

The order of the Federal Power Commission (R. 331-36)[1] is reported at 22 FPC 369; the order denying rehearing (R. 364-65) is reported at 22 FPC 655. The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. App. 1a-21a) is not yet reported.

[1] References are to the boldface certified record numbers contained in the Joint Appendix.

JURISDICTION

The Judgment of the Court of Appeals was entered on February 22, 1961 (Pet. App. 34a). A petition for rehearing was denied on April 25, 1961 (Pet. App. 35a). The petition for a writ of certiorari was filed on May 29, 1961. This Court has jurisdiction under 28 U.S.C. § 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. § 717r (b).

QUESTION PRESENTED

Was the court below correct in concluding (as have three other Courts of Appeals) that the Federal Power Commission, consistent with its obligation to protect gas consumers under the Natural Gas Act as interpreted in this Court's *CATCO* decision,[2] could not finally certificate gas producer sales at a price representing a sharp increase over pre-CATCO contract prices in the same area, where the only support offered for the challenged price was the existence of other pre-*CATCO* decision prices in the area certificated by the Commission prior to *CATCO* on equally defective records and under an erroneous view of law?

STATEMENT

The Superior Oil Company (Petitioner) seeks from the Federal Power Commission an unconditional certificate of public convenience and necessity authorizing the sale in interstate commerce of natural gas from offshore Louisiana. The gas is produced in the immediate vicinity of the CATCO reserves and is sold under a price schedule which is exactly the same as

---

[2] *Atlantic Refining Co.* v. *Public Service Comm'n*, 360 U.S. 378 (1959).

that found unsupported by this Court in its *CATCO* decision (R. 49).

The hearings before a Commission examiner occupied a single day, January 13, 1959, during a period when Commission precedents provided (1) that natural gas producers could justify an initial price in a certificate case merely by showing a market for the gas at the proposed price,[3] and (2) that proponents of a price condition not only had the burden of showing that the contract price was not justified but also had the burden of establishing the reasonableness of a proposed alternative price.[4] Hence, the applicants did not produce evidence bearing on the certification of a price at the CATCO level, apart from some evidence of other unregulated sales at the same or higher levels.

On August 7 and 10, 1959 the Commission issued six decisions of which the order under review was one, purporting to apply this Court's *CATCO* decision and unconditionally certificating South Louisiana sales in the 21-24 cent initial price range on substantially similar pre-*CATCO* records.

Respondent and the Public Service Commission of the State of New York sought review of five of these decisions, including the instant one,[5] and the court

---

[3] I.e., merely by submitting a bona fide sale contract with a non-affiliated pipeline company. See, e.g., *Hope Natural Gas Company*, 19 FPC 405 (1958).

[4] See e.g., *Seaboard Oil Company*, 19 FPC 416, 420, 423 (1958) (Opinion No. 309).

[5] The sixth order, in *South Georgia Natural Gas Co.*, 22 FPC 211, became final since neither Respondent nor the New York Commission was eligible in the Federal Power Commission's view (see *Trunkline Gas Co.*, 22 FPC 110) to participate in that proceeding.

below, as well as the Courts of Appeals of the Ninth, Tenth and District of Columbia Circuits, reversed.[6]

ARGUMENT

The record in this case is in all substantive respects identical to the records in the other four companion cases in which review of the Federal Power Commission's August 7 and 10, 1959, decisions was sought.[7] Accordingly, the petition for certiorari herein is in substance one for rehearing of this Court's order of April 17, 1961 in Nos. 774, 776, 780 and 793, denying certiorari to review judgments of the Ninth and District of Columbia Circuits in the first two of those companion cases to reach this Court. The opinions of all four circuits were reproduced in the petition in No. 774 (the opinion below appears at pp. 67-85) and all of

---

[6] The New York Commission sought review of the order in *Texas Gas Transmission Corp., et al*, 22 FPC 378, rev'd, *Public Service Comm'n* v. *FPC*, 287 F. 2d 146 (D.C. Cir. 1960), cert. denied, sub nom. *Hope Natural Gas Co.* v. *Public Service Comm'n*, 365 U.S. 880 (No. 793) and *Shell Oil Co.* v. *Public Service Comm'n*, 365 U.S. 882 (No. 774) (1961). Respondent sought review of the other four: *The California Co., et al.*, 22 FPC 252, rev'd, *United Gas Improvement Co.* v. *FPC*, 283 F. 2d 817 (9th Cir. 1960), cert. denied, sub nom. *Superior Oil Co.* v. *United Gas Improvement Co.*, 365 U.S. 879 (No. 780) and *California Co.* v. *United Gas Improvement Co.*, 365 U.S. 881 (No. 776) (1961); *Sunray Mid-Continent Oil Co.*, 22 FPC 361, rev'd, *United Gas Improvement Co.* v. *FPC*, 287 F. 2d 159 (10th Cir. 1961); *Sun Oil Corp.*, 22 FPC 351, rev'd, *United Gas Improvement Co.* v. *FPC*, No. 18, 112, CA 5 (February 22, 1961); and the instant case, *The Superior Oil Co.*, 22 FPC 369, rev'd, *United Gas Improvement Co.* v. *FPC*, No. 18, 113, CA 5 (February 22, 1961).

[7] The dissenting judge below (who had been supplied with copies of the records in the Ninth, Tenth and District of Columbia Circuit cases) characterized the respective records as "substantially the same" (Pet. App. 4a).

the contentions now advanced by Petitioner, including conflict of decision and legal error, were fully presented in one or more of the petitions denied on April 17, 1961.

CONCLUSION

For the foregoing reason it is respectfully requested that the petition for certiorari be denied.

Respectfully submitted,

J. David Mann, Jr.
William W. Ross
John E. Holtzinger, Jr.
William E. Zeiter
1120 Connecticut Ave., N. W.
Washington 6, D. C.

Attorneys for The United Gas Improvement Company

Morgan, Lewis & Bockius
Philadelphia — Washington

Of Counsel

June 7, 1961